

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

2006 JUN 21 P 2:34  
CLERK, US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY        DEPUTY

RICHARD R. GALVAN

V.

RAIL HEAD CLUB, JOHN C. BAINTER,  
NORWEST BANK AND WELLS FARGO  
BANK

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§  
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§  
§

CIVIL ACTION No. \_\_\_\_\_

**SA06CA0540**

**RF**

DEFENDANT, WELLS FARGO BANK, N.A.'S NOTICE OF REMOVAL

Defendant, WELLS FARGO BANK, N.A., files this notice of removal under 28 U.S.C.A.

§1446(a).

A. Introduction

1. Plaintiff is RICHARD R. GALVAN; the Defendants are WELLS FARGO BANK, N.A., a National Banking Association, and RAIL HEAD CLUB, alleged by the Plaintiff to be a company located in Galesburg, Illinois. The Defendant, JOHN C. BAINTER, is alleged by the Plaintiff to be an individual who resides at 3291 Westview Drive, Galesburg, Illinois.

2. Plaintiff herein, RICHARD R. GALVAN, sued the Defendant, WELLS FARGO BANK, N.A. (incorrectly identified in the Plaintiff's Original Petition as Norwest Bank and Wells Fargo Bank), as well as the Defendants, RAIL HEAD CLUB and JOHN C. BAINTER in the 37<sup>th</sup> Judicial District Court of Bexar County, Texas, alleging and claiming that he was lured into buying a membership into the entity known as "Rail Head Club" through misrepresentations that were false, misleading, deceptive and unconscionable. The Defendant, JOHN C. BAINTER, is alleged by the Plaintiff to be the owner and/or founder of RAIL HEAD CLUB. The Defendant, WELLS FARGO BANK, N.A. is alleged by the Plaintiff to have knowingly aided and abetted and sponsored the

alleged misdeeds and misrepresentations of the Defendants, RAIL HEAD CLUB and BANTER.

3. The Defendant, WELLS FARGO BANK, N.A., was served with the suit on June 6, 2006. Defendant, WELLS FARGO BANK, N.A., files this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b).

#### **B. Basis for Removal**

4. Removal is proper because there is complete diversity between the parties 28 U.S.C. §1332(a); *Darden v. Ford Consumer Fin. Co.*, 200F3d 753, 755 (11<sup>th</sup> Cir. 2000); *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10<sup>th</sup> Cir. 1995). Plaintiff is a citizen of the State of Texas as is indicated in his original Petition. None of the defendants are citizens of the State of Texas. Defendant is a citizen of the State of South Dakota. The amount in controversy exceeds \$75,000, excluding interest and costs. While the Plaintiff's Original Petition is, to say the very least, unclear about the amount of money sought by the Plaintiff, the Petition itself refers to a brochure attached to the Petition. The brochure is for a type of unemployment insurance for persons employed by the railroad. The brochure indicates that membership in the "Rail Head Club" will entitle the member to "reimbursement of \$200.00 per day for each day of dismissal or suspension, not to exceed 180 calendar days, and not to exceed \$6,000 per month." In other words, it appears that the maximum a member would be entitled to receive under this "membership" if he were suspended would be \$36,000.00. However, in addition to recovery of these alleged "actual damages" the Plaintiff additionally seeks to recover attorneys fees and exemplary damages. Attached to this Notice of Removal is the affidavit of the undersigned counsel indicating that a trial on the merits of this case would exceed \$50,000 and could be much higher depending upon whether the case were tried non-jury or jury and depending upon the discovery that is conducted.

5. In addition, the Plaintiff seeks punitive damages from “these Defendants”. While the amount of such exemplary damages sought is not specified, the Plaintiff seeks it in an amount “sufficient to deter these Defendants from engaging in such dastardly conduct in the future, and to discourage other such entities from treating their ‘members’ similarly.” The Defendant Wells Fargo is one of the largest banking companies in the United States. The State of Texas allows fact finder, in determining the appropriate amount of exemplary damages, to consider the net worth of the defendant in awarding an amount that would, as the Plaintiff has indicated, discourage similar future behavior. While Wells Fargo has done absolutely nothing that would justify any finding of liability in this cause, much less the imposition of exemplary damages, clearly in considering the amount in controversy in this case, the Court could assume that punitive damages could be many multiples of the actual damages sought by the Plaintiff for actual damages in this case.

6. Defendants, John C. Bainter and Rail Head Club, who have been served with summons consent to the removal of this case to federal court. *Balazik v. County of Dauphin*, 44 F.3d 209, 213 (3d Cir. 1995); *see* 28 U.S.C. § 1446(a). All other defendants who have been served with summons are not required to consent to the removal of this case to federal court. Specifically, consent of all other defendants is not necessary because there is no such entity known as Norwest Bank any longer. Wells Fargo and Norwest Bank were merged and Wells Fargo is the successor in interest to Norwest Bank.

7. All pleadings, process, orders and other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

8. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the action has been pending is located in this district.

9. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

**C. Jury Demand**

10. Plaintiff did not demand a jury in the state court action.

**D. Conclusion**

11. The Defendant files this Notice of Removal based upon the complete diversity between the Plaintiff and the Defendants in this cause. In addition, although the Plaintiff's pleadings do not specify the dollar amount of damages sought, based upon the brochure attached to the Plaintiff's Original Petition as well as the attorneys fees that are sought by the Plaintiff and the punitive damages as sought by the Plaintiff, it is reasonable and fair to say that the amount in controversy in this case will exceed \$75,000. For these reasons, Defendant, Wells Fargo Bank, N.A., asks the court to remove the action to this federal court.

Respectfully submitted,

**LAW OFFICE OF S. MARK MURRAY, INC.**

2818 NACOGDOCHES ROAD

SAN ANTONIO, TEXAS 78217

TELEPHONE: (210) 224-1800

TELECOPIER: (210) 224-2088

BY: \_\_\_\_\_

**S. MARK MURRAY**

State Bar No. 14729300

**ATTORNEY FOR DEFENDANT,  
WELLS FARGO BANK, N.A.**

**CERTIFICATE OF SERVICE**

I, S. MARK MURRAY, certify that a true and correct copy of the foregoing instrument was mailed to all parties and counsel as provided below, by first class United States mail, postage prepaid, on June 21, 2006:

Mr. Stephen P. Carrigan  
THE CARRIGAN LAW FIRM, L.L.P.  
2 Houston Center  
909 Fannin, Suite 1575  
Houston, Texas 77010  
Facsimile #713/739-0821  
ATTORNEYS FOR PLAINTIFF

  
\_\_\_\_\_  
S. MARK MURRAY

RUN DATE: 06/21/2006 BEXAR COUNTY CENTRALIZED DOCKET SYSTEM PG: 1 PGM: DKB49001  
 RUN TIME: 10:12:56 JCL: SPFPROD

## \* D O C K E T I N F O R M A T I O N \*

CAUSE NUM: 2006CI08357  
 DATE FILED: 05/30/2006 COURT: 037 UNPAID BALANCE: 0.00  
 TYPE OF DOCKET: DAMAGES

\* \* \* S T Y L E \* \* \*

RICHARD R GALVAN  
 VS RAIL HEAD CLUB ET AL

ACCOUNT TYPE: ACCOUNT NO:  
 ACCESS: 0 STATUS: PENDING  
 LIST TYPE: C

## \* L I T I G A N T I N F O R M A T I O N \*

SEQ	LAST /FIRST /MIDDLE NAME	LIT. TYPE/ATTORNEY	DATE
00001	GALVAN RICHARD R	PLAINTIFF	05/31/2006
		00001 CARRIGAN, STEPHEN P	
00002	RAIL HEAD CLUB	DEFENDANT	05/31/2006
00003	BAINTER JOHN C	DEFENDANT	05/31/2006
00004	NORTHWEST BANK	DEFENDANT	05/31/2006
00005	WELLS FARGO BANK	DEFENDANT	05/31/2006

## \* S E R V I C E S I N F O R M A T I O N \*

SEQ	SERVICE TYPE / DATES	DIST	LITIGANT NAME
00001	CITATION CERTIFIED MAIL	150	
	ISS: 05/31/2006 REC: 05/31/2006 EXE: 06/05/2006 RET: 06/08/2006		
00002	CITATION CERTIFIED MAIL	150	BAINTER JOHN C
	ISS: 05/31/2006 REC: 05/31/2006 EXE: 06/05/2006 RET: 06/08/2006		
00003	CITATION CERTIFIED MAIL	150	
	ISS: 05/31/2006 REC: 05/31/2006 EXE: 06/05/2006 RET: 06/07/2006		
00004	CITATION CERTIFIED MAIL	150	
	ISS: 05/31/2006 REC: 05/31/2006 EXE: 06/06/2006 RET: 06/08/2006		

## \* A T T O R N E Y I N F O R M A T I O N \*

SEQ	DATE FILED	BAR NBR.	NAME	STATUS	DATE
00001	05/31/2006	03877000	CARRIGAN, STEPHEN P	SELECTED	05/31/2006

## \* P R O C E E D I N G I N F O R M A T I O N \*

SEQ	DATE FILED	REEL	IMAGE	PAGE COUNT
00001	05/31/2006	0000	0000	0000
	DESC: PLAINTIFF'S ORIGINAL PETITION			
00002	05/31/2006	0000	0000	0000
	DESC: REQUEST FOR			

RUN DATE: 06/21/2006 BEXAR COUNTY CENTRALIZED DOCKET SYSTEM PG: 2 PGM: DKB49001  
RUN TIME: 10:12:56 JCL: SPPROD

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4 CITS CML

00003 05/31/2006 0000 0000 0000

DESC: SERVICE ASSIGNED TO CLERK 2

## \* T R I A L I N F O R M A T I O N \*

SEQ DATE FILED COURT SETT. DATE TIME ATTY

## \* O R D E R I N F O R M A T I O N \*

SEQ DATE FILED JUDGE NAME VOLUME PAGE PAGE CNT AMOUNT SOF

## \* B O N D I N F O R M A T I O N \*

SEQ DATE FILED PRINCIPAL

CERTIFIED MAIL #7160390198429 094

"The State of Texas"

NO. 2006-CI-08357RICHARD R GALVANPlaintiff  
vs.RAIL HEAD CLUB ET AL

Defendant

( Note: Attached Document May Contain Additional Litigants. )

**NOTICE****Citation Directed to: RAIL HEAD CLUB**

IN THE DISTRICT COURT

37th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

3291 WESTVIEW DR  
GALESBURG IL 61401-1183

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 30th day of May, 2006.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 31st DAY OF May  
A.D., 2006.

PLAINTIFF'S ORIGINAL PETITION

STEPHEN P CARRIGANAttorney/PLAINTIFF  
address909 FANNIN ST 1575  
HOUSTON, TX 77010-1014

MARGARET G. MONTEMAYOR  
District Clerk of Bexar County, Texas  
Bexar County Courthouse  
San Antonio, Texas 78205

By: Lidia Garcia Deputy

LIDIA GARCIA-GAMEZ

**OFFICER'S RETURN**

Came to hand on the 31st day of May, A.D., 2006 at 3:33 o'clock P.M. and  
EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the \_\_\_\_ day of \_\_\_\_\_, A.D.,  
\_\_\_\_, by delivering to \_\_\_\_\_ a true copy of this  
citation \_\_\_\_\_, upon which I endorsed the date of delivery, together  
with the accompanying copy of the PLAINTIFF'S ORIGINAL PETITION

Cause of failure to execute this \_\_\_\_\_ is \_\_\_\_\_

MARGARET G. MONTEMAYOR  
Clerk of the District Courts of  
Bexar County, Texas

By \_\_\_\_\_ Deputy

LIDIA GARCIA-GAMEZ

FILE COPY

(DK003)





CERTIFIED MAIL #7160390198429 1100

"The State of Texas"

NO. 2006-CI-08357

RICHARD R GALVAN  
 Plaintiff  
 vs.

RAIL HEAD CLUB ET AL  
 Defendant

( Note: Attached Document May Contain Additional Litigants. )

IN THE DISTRICT COURT  
37th JUDICIAL DISTRICT  
 BEXAR COUNTY, TEXAS

**NOTICE**

Citation Directed to: JOHN C BANTER

3291 WESTVIEW DR  
 GALESBURG IL 61401-1183

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 30th day of May, 2006.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 31st DAY OF May  
 A.D., 2006.

PLAINTIFF'S ORIGINAL PETITION

STEPHEN P CARRIGAN  
 Attorney/PLAINTIFF  
 address  
 909 FANNIN ST 1575  
 HOUSTON, TX 77010-1014



MARGARET G. MONTEMAYOR  
 District Clerk of Bexar County, Texas  
 Bexar County Courthouse  
 San Antonio, Texas 78205

By: Lidia Garcia Deputy  
 LIDIA GARCIA-GAMEZ

**OFFICER'S RETURN**

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 \_\_\_\_\_, by delivering to \_\_\_\_\_ a true copy of this  
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Cause of failure to execute this \_\_\_\_\_ is \_\_\_\_\_.

MARGARET G. MONTEMAYOR  
 Clerk of the District Courts of  
 Bexar County, Texas

By \_\_\_\_\_ Deputy  
 LIDIA GARCIA-GAMEZ

FILE COPY  
 (DK003)



CERTIFIED MAIL #7160390198426 2117

"The State of Texas"

NO. 2006-CI-08357

RICHARD R GALVAN

Plaintiff  
vs.

RAIL HEAD CLUB ET AL

Defendant

( Note: Attached Document May Contain Additional Litigants. )

IN THE DISTRICT COURT

37th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

## NOTICE

Citation Directed to: NORTHWEST BANK

125 MAIN STREET  
WINONA MN 55987

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 30th day of May, 2006.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 31st DAY OF May  
A.D., 2006.

PLAINTIFF'S ORIGINAL PETITION

STEPHEN P CARRIGAN

Attorney/PLAINTIFF  
address909 FANNIN ST 1575  
HOUSTON, TX 77010-1014

MARGARET G. MONTEMAYOR  
District Clerk of Bexar County, Texas  
Bexar County Courthouse  
San Antonio, Texas 78205

By: Lidia Garcia-Gamez Deputy

LIDIA GARCIA-GAMEZ

## OFFICER'S RETURN

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EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the \_\_\_\_ day of \_\_\_\_\_, A.D.,  
\_\_\_\_\_, by delivering to \_\_\_\_\_ a true copy of this  
citation \_\_\_\_\_, upon which I endorsed the date of delivery, together  
with the accompanying copy of the PLAINTIFF'S ORIGINAL PETITION

Cause of failure to execute this \_\_\_\_\_ is \_\_\_\_\_.

MARGARET G. MONTEMAYOR  
Clerk of the District Courts of  
Bexar County, Texas

By \_\_\_\_\_ Deputy

LIDIA GARCIA-GAMEZ

FILE COPY

(DK003)



CERTIFIED MAIL #71603901984 52124

"The State of Texas"

NO. 2006-CI-08357

RICHARD R GALVAN

Plaintiff  
vs.

RAIL HEAD CLUB ET AL

Defendant

( Note: Attached Document May Contain Additional Litigants. )

**NOTICE****Citation Directed to:** WELLS FARGO BANK  
BY SERVING ITS PRESIDENT JOHN WINSTON

IN THE DISTRICT COURT

37th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

200 E MAIN STREET  
GALESBURG IL 61401-4707

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 30th day of May, 2006.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 31st DAY OF May  
A.D., 2006.

PLAINTIFF'S ORIGINAL PETITION

STEPHEN P CARRIGAN

Attorney/PLAINTIFF  
address909 FANNIN ST 1575  
HOUSTON, TX 77010-1014MARGARET G. MONTEMAYOR  
District Clerk of Bexar County, Texas  
Bexar County Courthouse  
San Antonio, Texas 78205By: Lidia Garcia-Gamez Deputy  
LIDIA GARCIA-GAMEZ**OFFICER'S RETURN**

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EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the \_\_\_\_ day of \_\_\_\_\_, A.D.,  
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MARGARET G. MONTEMAYOR  
Clerk of the District Courts of  
Bexar County, Texas

By \_\_\_\_\_ Deputy

LIDIA GARCIA-GAMEZ

FILE COPY

(DK003)



2006 C108367 COPY

The  
2006 MAY 30  
DISTRICT CLERK  
BEXAR COUNTY, TEXAS  
CARRIGAN: 15  
DEPUTY

Law Firm

A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

TWO HOUSTON CENTER, 909 FANNIN, SUITE 1575, HOUSTON, TEXAS 77010

TELEPHONE (713) 739-0810

FACSIMILE (713) 739-0821

MAY 25 2006  
PROCESS DEPT.

Margaret Montemayor  
Bexar County District Clerk  
100 Dolorosa St.  
San Antonio, Texas 78205

37th

Re: Cause No. \_\_\_\_\_; Richard Galvan v. Rail Head Club, John C. Bainter, Norwest Bank and Wells Fargo Bank; In the \_\_\_\_\_ Judicial District Court of Bexar County, Texas.

Dear Sir:

Enclosed please find for filing in the above referenced matter and original and five copies of Plaintiff's Original Petition.

Also enclosed is our firm check in the amount of \$454.00 constituting payment of filing fees for the Petition, issuance of Citations for four defendants, and **service of process by certified mail for all defendants.**

I ask that you issue citations to Rail Head Club at 3291 Westview Dr., Galesburg, Illinois 61401-1183;

John C. Bainter, President and Owner of Rail Head Club, at 3291 Westview Dr., Galesburg, Illinois 61401-1183;

Norwest Bank, at 125 Main Street, Winona, Minnesota 55987; and,

Wells Fargo Bank, President John Winston, 200 East Main Street, Galesburg, Illinois 61301.

Please return to my office one file stamped copy of the petition via the enclosed envelope.

Thank you for your usual assistance and cooperation in this matter and if you have any questions regarding the enclosed I can be reached at the address and phone number listed above.

Very truly yours,

  
Wendy Watson

Enclosures

4013 me  
2006 C108357

ORIGINAL

The  
CARRIGAN

Law Firm

A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

TWO HOUSTON CENTER, 909 FANNIN, SUITE 1575, HOUSTON, TEXAS 77010

TELEPHONE (713) 739-0810

MAY 25, 2006

FACSIMILE (713) 739-0821

CRT  
PROCESS DEPT.

37th

Margaret Montemayor  
Bexar County District Clerk  
100 Dolorosa St.  
San Antonio, Texas 78205

Re: Cause No. \_\_\_\_\_; Richard Galvan v. Rail Head Club, John C. Bainter, Norwest Bank and Wells Fargo Bank; In the \_\_\_\_\_ Judicial District Court of Bexar County, Texas.

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John C. Bainter, President and Owner of Rail Head Club, at 3291 Westview Dr., Galesburg, Illinois 61401-1183;

Norwest Bank, at 125 Main Street, Winona, Minnesota 55987; and,

Wells Fargo Bank, President John Winston, 200 East Main Street, Galesburg, Illinois 61301.

Please return to my office one file stamped copy of the petition via the enclosed envelope.

Thank you for your usual assistance and cooperation in this matter and if you have any questions regarding the enclosed I can be reached at the address and phone number listed above.

Very truly yours,

  
Wendy Watson

Enclosures

2006 CI 08357  
NO.

ORIGINAL

20

RICHARD R. GALVAN

VS.

RAIL HEAD CLUB, JOHN C. BANTER,  
NORWEST BANK and WELLS FARGO  
BANK

IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

37th

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

NOW COMES RICHARD R. GALVAN, Plaintiff herein, and files this lawsuit complaining of RAIL HEARD CLUB, JOHN C. BANTER, NORWEST BANK and WELLS FARGO BANK, Defendants, and in support thereof would respectfully show the Court the following:

**I.**

**PARTIES**

Defendant, Rail Head Club, is a company located in Galesburg, Illinois, and may be served by forwarding a copy of this Petition by certified mail return receipt requested to 3291 Westview Dr., Galesburg, Illinois 61401-1183.

Defendant, John C. Bainter, is the President and Owner of Rail Head Club, and may be served by forwarding a copy of this Petition by certified mail return receipt requested to 3291 Westview Dr., Galesburg, Illinois 61401-1183.

Defendant Norwest Bank is a financial/lending institution which may be served by forwarding a copy of this Petition by certified mail return receipt requested to 125 Main Street, Winona, Minnesota 55987.

Defendant Wells Fargo Bank is a financial/lending institution which may be served by forwarding a copy of this Petition by certified mail return receipt requested to its President, John



Winston, at 200 East Main Street, Galesburg, Illinois 61401.

## II.

### BACKGROUND FACTS

Your Plaintiff, Richard R. Galvan, is resident of Bexar County, Texas, and a full-time employee of Union Pacific Railroad Company. As such, your Plaintiff came across publicly disseminating promotional materials and propaganda about the Defendant herein, Rail Head Club. Rail Head Club is reported to be "a company owned and operated by railroaders in Galesburg, Illinois, to protect other fellow railroaders in our operating crafts...TEY." The Rail Head Club contains many representations and promises about the protections and services it offers that are intended to be extremely enticing, appealing and alluring to "railroaders" such as your Plaintiff. Indeed, you Plaintiff was lured to join the Rail Head Club by the many promises and representations contained within. Plaintiff was especially interested in the insurance afforded to Rail Head Club members in the event of suspension by the railroad employer.

"WHAT DO I DO WHEN I GET INTO TROUBLE? Simple - - call us! Call Rail Head Club and we will send you a reimbursement form to fill out and send it back with your letter of suspension and we will start reimbursing you..... It's just that simple! You expect your payday income to be protected and RAIL HEAD CLUB does exactly that, without hassle or excuses." In fact, the Rail Head Club promotional/sales information is so glossy and attractive that the Rail Head Club brochure states "Rail Head Club looks too good to be true, right?"

Based on the above and much, much more, it is no wonder that your Plaintiff bought into what Defendants were selling. Unfortunately, all of the Defendants' representations and promises turned out to be false and nothing more than intentional misrepresentations that were false,

misleading, deceptive and unconscionable. Sure enough, when your Plaintiff herein experienced work suspensions, all of a sudden, your Defendants responded with what they specifically promised they would not do – that is all that they provided Plaintiff with was hassle, excuses, obstacles and everything but Plaintiff's payday income that the Defendants herein had contracted to protect.

**III.**

**VENUE AND JURISDICTION**

Venue and Jurisdiction are proper in Bexar County, Texas, in that Plaintiff at all times material hereto was a resident of Bexar County, Texas, and due to the fact that most if not all of the acts or omissions that give rise to Plaintiff's causes of action occurred in Bexar County, Texas, and the fact that all of your Plaintiff's damages/losses were incurred in Bexar County, Texas.

**IV.**

**CAUSES OF ACTION AS TO DEFENDANTS  
RAIL HEAD CLUB AND JOHN C. BANTER**

A. Breach of Contract. Plaintiff entered into a lawfully binding contract with your Defendants herein to provide wage/income protection/insurance as a result of suspension/dismissal from service by his railroad employer, Union Pacific Railroad Company. Although Plaintiff fully complied with all of his duties, obligations and conditions precedent to compensation from a claim, Defendants herein totally failed and refused to fulfill their contractual duties and obligations. As a result, Defendants have breached their contract with Plaintiff herein, causing Plaintiff serious and continuing damages. As a result of said breaches and damages, Plaintiff has been forced to retain an attorney to prosecute these claims and to obtain on behalf of your Plaintiff, justice and Plaintiff's rightful compensation. Plaintiff is entitled to seek recovery of his incurred attorneys' fees and legal

expenses and hereby does so. Defendants' breaches were intentional and egregious. A copy of a portion of Plaintiff's contract with Defendants is attached as Exhibit #1.

B. Intentional Misrepresentation Defendants' misrepresentations were knowingly, willfully, and intentionally made to lure unsuspecting railroaders to buy Defendants' scam of lies, misrepresentations, deceit and falsehoods. Defendants must, therefore, be held accountable for same.

V.

**CAUSES OF ACTION AS TO DEFENDANTS  
NORWEST BANK AND WELLS FARGO BANK**

Defendants Norwest Bank and Wells Fargo Bank are liable for Plaintiff's damages as co-conspirators with Defendants Rail Head Club and John C. Bainter, and for knowingly aiding, abetting and sponsoring the misdeeds and misrepresentations of Defendants Rail Head Club and John C. Bainter. Evidence of this sponsorship is attached hereto as Exhibit #2.

VI.

**DAMAGES**

As a result of Defendants' numerous breaches and intentional misrepresentations, Plaintiff is out of pay/income that should have been "protected" by Defendants' services and products. In addition, Plaintiff is entitled to pre-judgment and post judgment interest as allowed by law, and as stated above, is entitled to recoup his legal costs and attorneys' fees.

VII.

**EXEMPLARY DAMAGES**

As a result of Defendants' knowing, willful and intentional breaches of contract and

communicated misrepresentations, Defendants should be sanctioned/punished by the imposition of exemplary damages. The exemplary damages should be in an amount sufficient to deter these Defendants from engaging in such dastardly conduct in the future, and to discourage other such entities from treating their "members" similarly. The imposition of punitive damages is necessary in order to prevent these Defendants from taking similar advantage from other unsuspecting and trusting railroaders.

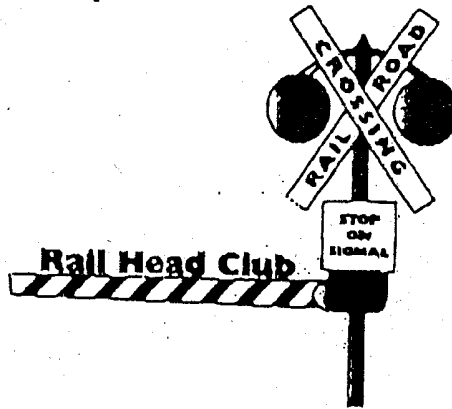
**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that Defendants, and each of them, be cited and required to answer herein according to law, and that upon final hearing hereof that Plaintiff be granted judgment against Defendants, jointly and severally, for the full amount of the damages of Plaintiff in each of the capacities in which he sues, for pre-judgment interest and post-judgment interest, for costs of Court, for punitive damages severally as to each Defendant found liable for the same, and for such other relief at law or in equity, in which Plaintiff may appear entitled.

Respectfully submitted,

**THE CARRIGAN LAW FIRM, L.L.P.**

By: 

Stephen P. Carrigan  
State Bar No. 03877000  
2 Houston Center  
909 Fannin, Suite 1575  
Houston, Texas 77010  
713-739-0810  
713-739-0821 (facsimile)  
Attorneys for Plaintiff  
Richard R. Galvan



# Certificate of Assurance

THE FOLLOWING MEMBER IS PROTECTED BY RAIL HEAD CLUB against the existing discipline systems presently in use by AMERICA'S RAILROADS today.

MEMBER: RICHARD R. GALVAN #828

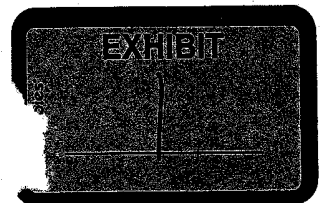
The individual member shall be entitled to reimbursement of \$200.00 per day for each day of dismissal or suspension, not to exceed 180 Calendar days, and not to exceed \$6000.00 per month. Each member must continue to pay membership fee each month, including months of dismissal or suspension, to be entitled to full reimbursement.

Failure to contribute the membership fee during any month of dismissal or suspension, shall exclude that member from receiving their reimbursement for the non-membership monthly period of time.

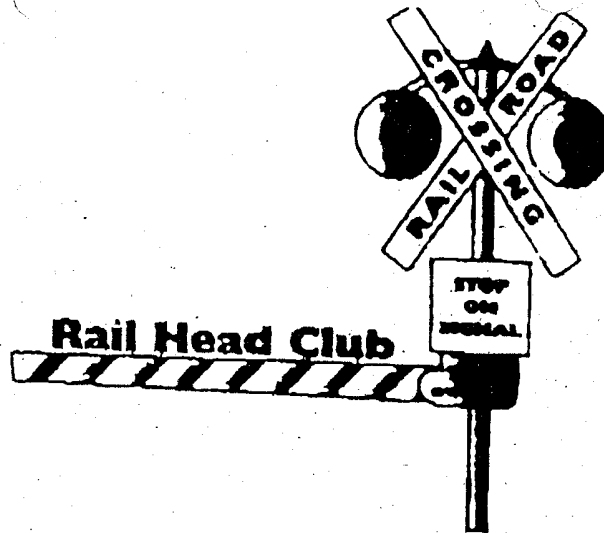
Reimbursement is made only to RAIL HEAD CLUB members with current membership fees paid in full. RAIL HEAD CLUB shall provide reimbursement for Violation of Rule "G"(GCOR 1.5) and Insubordination at \$100.00 per day for each day of dismissal or suspension, not to exceed 30 days, and not to exceed \$3000.00. Reimbursement under these two rules is restricted to a ONE-TIME ALLOWANCE for either Rule "G" or Insubordination. Reimbursement is limited to one-time payment during members career. Reimbursement for either Rule "G" or Insubordination shall constitute the one-time reimbursement allowance and disqualify member for any further reimbursement under these two existing rules.

A member of RAIL HEAD CLUB having maintained continuous membership for a period of more than fifteen(15) years, and who did not receive any reimbursement during their career with RAIL HEAD CLUB, shall be entitled to a one-time reimbursement of \$2500.00 upon retirement, or separation from railroad service, other than by resignation.

*J. C. Bainter*  
John C. Bainter  
President



P.O. Box 1171 • Galesburg, IL 61401 • 309-342-7360



INFORMATION CONCERNING RAIL HEAD CLUB

RAIL HEAD CLUB is a company owned and operated by railroaders in Galesburg, Illinois, to protect other fellow railroaders in our operating crafts..TEY.

RAIL HEAD CLUB is a company which is financially underwritten by NORWEST BANK which recently merged with WELLS FARGO BANK to become the second-largest banking conglomerate West of the Mississippi River.

RAIL HEAD CLUB has been in business officially since January 1, 1998. Although we are relatively new, we are committed to providing the best possible job protection for our members. We are unmatched in our protection level and pricing not to mention our refunding policy.

RAIL HEAD CLUB doesn't maintain sales personnel along the railroads so that we can maintain low costs. We feel that Rail Head Club is so good that it should sell itself, after all, that is really what a product or service should do.

RAIL HEAD CLUB continues to seek ways to improve our service so that we can always be the best. As of July 1, 1998 we included protection for Rule G and Insubordination into our protection for our members. No other service provides this for their men/women.

We hope to improve the refund policy amount from \$2500.00 at present to a higher level later as we grow as a company.

RAIL HEAD CLUB looks too good to be true, right? That's because real railroaders own and operate it, and not some company that has nothing to do with railroaders.

RAIL HEAD CLUB is good enough to sell itself to our brother railroaders, and we are very pleased to introduce it to you if you are interested.

John C. Bainter  
President  
RAIL HEAD CLUB

A handwritten signature in black ink, appearing to read 'J C Bainter', is written below the printed name and title.



FILED  
DISTRICT CLERK  
BEXAR CO. TEXAS  
NO. 2006-CI-08357

RICHARD R. GALVAN

2006 JUN 21 AM 11:30

DEPUTY

IN THE DISTRICT COURT

VS.

37<sup>th</sup> JUDICIAL DISTRICT

RAIL HEAD CLUB, JOHN C. BAINTER,  
NORWEST BANK and WELLS FARGO  
BANK

BEXAR COUNTY, TEXAS

**DEFENDANT, WELLS FARGO BANK, N.A.'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes WELLS FARGO BANK, N.A., Defendant in the above entitled and numbered cause, and files this its first Original Answer herein, and for grounds of defense says:

THAT said Defendant denies generally all and singular each and every allegation of fact contained in the Plaintiff's Original Petition filed herein and says that this Defendant will require strict proof thereof.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that all relief prayed for by Plaintiff be denied and that Plaintiff take nothing herein and that Defendant go hence with its costs.

Respectfully submitted,

**LAW OFFICE OF S. MARK MURRAY, INC.**

2818 NACOGDOCHES ROAD  
SAN ANTONIO, TEXAS 78217  
TELEPHONE: (210) 224-1800  
TELECOPIER: (210) 224-2088

By: \_\_\_\_\_

**S. MARK MURRAY**  
State Bar No. 14729300

**ATTORNEY FOR DEFENDANT,  
WELLS FARGO BANK, N.A.**

CERTIFICATE OF SERVICE

I, S. MARK MURRAY, certify that a true and correct copy of the foregoing instrument was mailed to all parties and counsel as provided below, by facsimile and/or by certified mail, return receipt requested, on June 21<sup>st</sup>, 2006:

Mr. Stephen P. Carrigan  
THE CARRIGAN LAW FIRM, L.L.P.  
2 Houston Center  
909 Fannin, Suite 1575  
Houston, Texas 77010  
Facsimile #713/739-0821  
ATTORNEYS FOR PLAINTIFF

  
\_\_\_\_\_  
S. MARK MURRAY



**PARTIES AND ATTORNEYS OF INTEREST**

**PARTIES:**

Plaintiff: Richard R. Galvan

Defendant: Wells Fargo Bank, N.A.

Defendant: Rail Head Club

Defendant: John C. Bainter

**ATTORNEY:**

Mr. Stephen P. Carrigan  
THE CARRIGAN LAW FIRM, L.L.P.  
2 Houston Center  
909 Fannin, Suite 1575  
Houston, Texas 77010  
713/739-0810; Facsimile #713/739-0821

Mr. S. Mark Murray  
Law Office of S. Mark Murray, Inc.  
2818 Nacogdoches Road  
San Antonio, Texas 78217  
224-1800; Facsimile #224-2088

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

RICHARD R. GALVAN

§

§

V.

§

CIVIL ACTION NO. \_\_\_\_\_

§

RAIL HEAD CLUB, JOHN C. BAINTEER,

§

NORWEST BANK AND WELLS FARGO

§

BANK

§

**AFFIDAVIT OF S. MARK MURRAY IN SUPPORT OF**  
**DEFENDANT, WELLS FARGO BANK, N.A.'S NOTICE OF REMOVAL**

BEFORE ME, the undersigned authority, on this day personally appeared, S. MARK MURRAY, known to me to be the person whose name is subscribed hereto, and after having been duly sworn upon his oath, stated as follows:

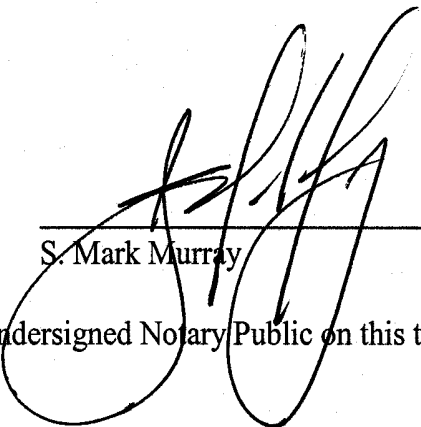
"My name is S. MARK MURRAY. I am over the age of 21, have personal knowledge of all of the facts as are herein recited and am fully competent to make this affidavit. I am an attorney licensed by the States of Texas and Colorado. I graduated from the University of Texas School of Law in 1977, passed the bar examination in the State of Texas that same summer and I have been licensed in the State of Texas since November 11, 1977. I have been actively engaged in the practice of law in San Antonio, Bexar County, Texas since January of 1978. Most of my practice since that time has been involved with business trial practice. As such, I am familiar with the trial of cases and the usual and customary fees which are charged in Bexar County, Texas for the trial of cases such as the above styled and numbered case. Although it is difficult to tell exactly what the amount of the claims are that are being asserted by the Plaintiff in this case, it is clear that most of the witnesses who would need to be deposed from the defense standpoint would be in Illinois. All of the bankers

who were involved in any way with Rail Head Club are located in Illinois as is the Defendant, John C. Bainter as well as his organization, Rail Head Club. While it is impossible to tell at this point with any precision, the exact discovery that would be necessitated in the event this case were tried, it is reasonable to assume it would involve traveling to Illinois probably more than once and probably for more than one day whenever such a trip were necessitated.

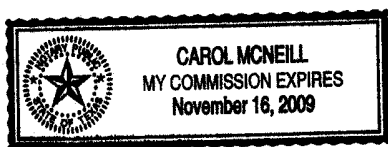
"It appears from the Plaintiff's Original Petition that the Plaintiff is seeking relief under, among other things, the *Texas Consumer Protection-Deceptive Trade Practices Act*. Under the provisions of that statute, if the Plaintiff prevails he is entitled to recover reasonable attorneys fees and, if he obtains a finding that the violations of the Act were committed "knowingly" (as the Plaintiff appears to be alleging in this case) can also recover an amount of "additional damages" (in addition to actual damages) equal to three times the amount of actual damages.

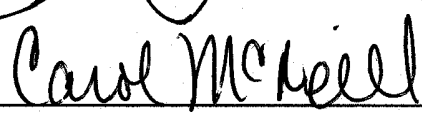
"In my opinion, given the allegations of the Plaintiff, it is reasonable to assume that the cost of trying this case to judgment or verdict could easily exceed the sum of \$50,000 as and for reasonable attorneys fees. If the case is tried to a jury, that number would certainly be exceeded."

Further Affiant Sayeth Not.

  
S. Mark Murray

Sworn to and subscribed before me, the undersigned Notary Public on this the 21<sup>st</sup> day of JUNE, 2005.



  
Notary Public in and for the State of Texas  
My Commission Expires: 11-16-09

**CERTIFICATE OF SERVICE**

I, S. MARK MURRAY, certify that a true and correct copy of the foregoing instrument was mailed to all parties and counsel as provided below, by first class United States mail, postage prepaid, on June 21, 2006:

Mr. Stephen P. Carrigan  
THE CARRIGAN LAW FIRM, L.L.P.  
2 Houston Center  
909 Fannin, Suite 1575  
Houston, Texas 77010  
Facsimile #713/739-0821  
ATTORNEYS FOR PLAINTIFF

  
\_\_\_\_\_  
S. MARK MURRAY